(17,645.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 205.

EDWARD C. BAGGS, AS RECEIVER OF THE DENVER CITY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALBERT G. MARTIN, HARRY D. MARTIN, AND HERMAN H. MARTIN.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 14, 1900.

1 United States Circuit Court of Appeals, Eighth Circuit.

EDWARD C. BAGGS, as Receiver of the Denver City Railroad Company, Plaintiff in Error, vs. ALBERT G. MARTIN, HARRY D. Martin, and Herman H. Martin, Defendants in Error.	On Certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

The United States circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, Missouri, on this fifth day of February, 1900, hereby certifies that upon the record on file in said court in the above-entitled cause, wherein Edward C. Baggs, as receiver of the Denver City Railroad Company, is plaintiff in error, and Albert G. Martin, Harry D. Martin, and Herman H. Martin are defendants in error, and which cause is now pending before this court on writ of error to the circuit court of the United States for the district of Colorado, the following facts appear, namely:

That Edward C. Baggs, the plaintiff in error, was duly appointed receiver of the Denver City Railroad Company, a corporation organized and existing under the laws of the State of Colorado, on the 1st day of July, 1898, by the circuit court of the United States for the district of Colorado, in an action brought in said court by the Central Trust Company, a corporation of the State of New York, against the said Denver City Railroad Company; that thereupon said receiver entered upon the discharge of his duties as receiver and in that capacity continued to operate the railroad of said Denver City Railroad Company and to exercise its franchises within the city of Denver; that on August 5, 1898, while said railroad was being operated by the receiver, as aforesaid, one Mary E. Martin, the mother of the above-mentioned defendants in error, was a passenger on one of the cars which was being
2 operated by the receiver, and in endeavoring to alight therefrom received injuries on account of which she died on August 7, A. D. 1898; that on account of the injuries so sustained the above-named defendants in error, who were the sons of the deceased, brought an action in the district court for the county of Arapahoe, State of Colorado, against Edward C. Baggs, as receiver of the Denver City Railroad Company, wherein they alleged and charged in substance that the death of said Mary E. Martin was occasioned by the fault and negligence of certain persons in the employ of said receiver who were at the time engaged in operating said car for and in behalf of the receiver, and wherein they claimed damages, in accordance with the laws of the State of Colorado, against said Edward C. Baggs, in his capacity as receiver, in the sum of $5,000.00; that thereafter, on September 19, A. D. 1898, and within due time, said receiver presented his petition and bond to the district court for the county of Arapahoe, praying for the removal of said cause from said court to the circuit court of the United States for the dis-

trict of Colorado on the sole ground "that the said action" (the one sought to be removed) "is one arising under the laws of the United States and is ancillary to said action and proceeding in the said circuit court of the United States for the district of Colorado, wherein the said Central Trust Company of New York is complainant and the said The Denver City Railroad Company is defendant;" that said application for removal was thereafter granted on September 21, A. D. 1898, by an order duly made by said district court for the county of Arapahoe; that thereafter a trial of said cause was had in the circuit court of the United States for the district of Colorado, and on said trial a judgment was recovered against said Edward C. Baggs, in his capacity as receiver of the Denver City Railroad Company, in the sum of $3,000. Afterwards, in due season, to wit, on July 18, 1899, said judgment having been rendered on July 12, 1899, the record in said cause was duly removed by writ of error to the United States circuit court of appeals for the
3 eighth circuit, where it still remains, the cause being as yet undecided.

And the said United States circuit court of appeals hereby certifies that, to the end that it may properly decide said case, it desires the instruction of the Supreme Court of the United States upon the following questions or propositions of law arising therein, which are duly raised and presented by the record in said case, said questions being as follows:

First. In view of the provisions contained in section 3 of the judiciary act approved on March 3, 1887 (25 Statutes, c. 866, p. 436), permitting receivers appointed by any court of the United States to be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver is appointed, was it competent for said Edward C. Baggs, as receiver of the Denver City Railroad Company, to remove said cause from the district court of Arapahoe county, wherein he was sued, to the circuit court of the United States for the district of Colorado?

Second. Did said circuit court for the district of Colorado, by virtue of the aforesaid removal, acquire lawful jurisdiction of said cause and power to render the aforesaid judgment therein?

In witness whereof the undersigned, judges of the said United States circuit court of appeals for the said eighth circuit, have hereunto set their hands this fifth day of February, A. D. 1900, at St. Louis, Missouri, and hereby order and direct that the foregoing certificate be filed in said circuit court of appeals, and by the clerk of said court be duly forwarded to the Supreme Court of the United States.

HENRY C. CALDWELL,
WALTER H. SANBORN,
AMOS M. THAYER,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

4 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of Edward C. Baggs, as receiver of the Denver City Railway Company, plaintiff in error, *vs.* Albert G. Martin, Harry D. Martin, and Herman H. Martin, defendants in error, No. 1308, December term, A. D. 1899, was duly filed and entered of record in my office by order of said circuit court of appeals, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this fifth day of February, A. D. 1900.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

5 [Endorsed:] Original. U. S. circuit court of appeals, eighth circuit, December term, 1899. No. 1308. Edward C. Baggs, as receiver, &c., plaintiff in error, *vs.* Albert G. Martin *et al.* Certificate of questions to Supreme Court of the United States. Filed Feb. 5, 1900. John D. Jordan, clerk.

Endorsed on cover: File No., 17,645. U. S. C. C. of appeals, 8th circuit. Term No., 205. Edward C. Baggs, as receiver of the Denver City Railroad Company, plaintiff in error, *vs.* Albert G. Martin, Harry D. Martin, and Herman H. Martin. (Certificate.) Filed February 15th, 1900.